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1977 PROTOCOLS ADDITIONAL TO THE 1949 GENEVA CONVENTIONS

NEGOTIATIONS COMPLETED - US signed the Additional Protocols on 12 December 1977; they have not been submitted to the Senate.

- To date, 62 nations signed Protocol I; 61 nations, Protocol II. 21 nations ratified/acceded to Protocol I; 19 nations, Protocol II. Norway only NATO nation to ratify.

BACKGROUND - At the close of the 1949 Diplomatic Conference which produced the four Geneva Conventions concerned with the victims of war, the Conference asked the UN International Law Commission to codify the law dealing with the methods and means of warfare.

- The UN Commission declined the task. The International Committee of the Red Cross (ICRC) accepted the task and produced draft rules in 1956. The rules received little international recognition.
- In 1968, the ICRC decided to supplement the Geneva Conventions, rather than amend them. From 1974 - 1977, the US actively participated in the diplomatic conference which ultimately drafted two protocols.
 - Protocol I (102 articles and two annexes) concerns international armed conflict; Protocol II (28 articles) addresses internal ("noninternational") armed conflict.

MAJOR ISSUES

- The Additional Protocols are the most complex agreements ever negotiated to be proposed for the law of armed conflict. The negotiators intended to update the law of armed conflict and to integrate two traditions within that body of law: the Hague tradition - the rules of combat; and the Geneva tradition - the protections for the victims of armed conflict.

General Military Issues

- Applicability of the protocols to the employment of nuclear, chemical, and biological (NBC) weapons.
 - The ICRC and the negotiating history clearly reflect the conferees' understanding that the protocols do NOT apply to NBC weapons.
 - But the lack of an explicit statement in the protocols is being cited by advocates that the protocols do apply.
 - Interagency working group agrees that US should make statement of understanding at ratification.

INTERNAL STAFF PAPER
RELEASE COVERED BY JCS MOP NO. 39

CLASSIFIED BY DIRECTOR, J-5
REVIEW ON 01 APR 2002
EXTENDED BY DIRECTOR, J-5
REASON: 5200.1R, 2-301.C7

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- Reprisals. Protocols prohibit reprisals against a variety of objects, including the natural environment, dams, dikes, and nuclear electrical generating stations.
 - Some NATO allies have expressed political concern about reserving the right to reprisals because of possible retaliation by the Eastern bloc.
 - Since reprisals serve as an effective remedy for violations of the law, the interagency working group has agreed that some form of reservation should be made by the US at ratification.
- Effect upon combined military operations. If states ratify the protocols with numerous, varying reservations and statements of understanding, combined forces/allied military planners would be constrained by the most restrictive national interpretations of international law. In effect, the military profession faces the prospect of many differing bodies of "the law of armed conflict."

Legal Policy Issues

- Consensus about "the law of armed conflict". At present, "the law of armed conflict" is recognized internationally by a broad consensus about its principles and detailed provisions under conventional international law. The prospect of "many protocols" (noted above) would destroy that consensus not only between allies but also between adversaries.
- Respect for the law. The attempt to integrate the two law of armed conflict traditions in the protocols reflects a concerted effort to regulate the conduct of armed conflict. Impractical restrictions that displace the principles of combat undermine or destroy respect for the law.

Key Political Issues

- Scope of application. Protocols provide for almost universal application of law to every level and type of conflict. For certain otherwise illegal or unrecognized groups, the protocols offer legal means to demand international recognition as a legitimate belligerent - rather than treatment as criminals.

JCS POSITION - JCSM-448-77, 7 Dec 77:

- Supported US signature of Protocols so long as certain conditions were expressed at that time.
 - For example, protocols do not apply to nuclear weapons.

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- JCS also provided texts, subject to further review, of reservations and statements of understanding for use at ratification.
- JCS final position concerning ratification required more detailed military study.

CURRENT STATUS

- Within USG: Interagency working group (State, ACDA, OSD, JCS) has been informally reviewing Protocols for Administration decision to submit them to Senate for its advice and consent to ratification. State recently asked for DOD progress report on departmental review.
 - JCS recently informed OSD that they will complete their review for ratification in December 1982, following completion of the Services' (mid-1982) and the CINCs' (autumn) reviews.
 - USD(P) responded by proposing a 31 July 1982 suspense.
- Within NATO: Dutch and Belgians plan to present protocols to their respective parliaments' next sessions.
- Eastern bloc: No overt signs of review for ratification.

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AS OF: 01 APR 82

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